

**Gencor Bituma Corporation<sup>1</sup> and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 18-CA-12530**

April 8, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

On February 5, 1993, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to provide certain requested information following the Union's certification in Case 18-RC-15244. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 8, 1993, the General Counsel filed a Motion for Summary Judgment and brief in support, with exhibits attached. On March 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the bases of the Board's determination as to the unit and as to the Respondent's objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted

that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Washington corporation, with an office and place of business in Marquette, Iowa, has been engaged in the manufacture and nonretail sale and distribution of asphalt plants, batch plants, and other types of asphalt production equipment. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, sold and shipped from its Marquette, Iowa facility goods valued in excess of \$50,000 directly to points outside the State of Iowa. During the same period of time, the Respondent purchased and received at its Marquette, Iowa facility goods valued in excess of \$50,000 directly from points outside the State of Iowa. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held July 16, 1992, the Union was certified on January 5, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed at its Marquette, Iowa facility, including welders, electricians, janitors, parts control specialists, laborers, machine operators, drivers, production control expeditors, working foremen, painters, warehouse inventory clerks, maintenance mechanics, press brake operators, material handlers, machinists, carpenters, maintenance clerks, parts/service coordinators, sand blasters, shipping/receiving clerks and tool room attendants; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since January 12, 1993, the Union has requested the Respondent to bargain and to furnish information, and, since February 1, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>1</sup> In its answer, the Respondent alleges that its correct name is Bituma Corporation. We leave to the compliance stage the appropriate resolution of the Respondent's name.

## CONCLUSION OF LAW

By refusing on and after February 1, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Gencor Bituma Corporation, Marquette, Iowa, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed at its Marquette, Iowa facility, including welders, electricians, janitors, parts control specialists, laborers, machine operators, drivers, production control expeditors, working foremen,

painters, warehouse inventory clerks, maintenance mechanics, press brake operators, material handlers, machinists, carpenters, maintenance clerks, parts/service coordinators, sand blasters, shipping/receiving clerks and tool room attendants; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) Post at its facility in Marquette, Iowa, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed at our Marquette, Iowa facility, including welders, electricians, janitors, parts control specialists, laborers, machine operators, drivers, production control expeditors, working foremen, painters, warehouse inventory clerks, maintenance mechanics, press brake operators, material handlers, machinists, carpenters, maintenance clerks, parts/service coordinators, sand blasters, shipping/receiving clerks and tool room attend-

ants; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

GENCOR BITUMA CORPORATION